IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 9930 of 2007

Date of Decision : 6th September, 2007

Manisha Gupta.

… Petitioner

Versus

Punjabi University, Patiala and another.

….Respondents

CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL,
HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mr. B.S. Guliani, Advocate,
for the petitioner.

Mr. Vipul Jindal, Advocate,
for respondent No.1.

S.D. Anand, J.

Conceded facts in the first instance. The petitioner, a B.A. Part II student on the rolls of respondent No.2-Institution, was scheduled to appear at the final examination at Centre Samana. While she did appear in the three papers (Computer Practical, Computer Application-A and Punjabi Compulsory) on 26.03.2007, 02.04.2007 and 12.04.2007 respectively, she had to opt out of the remaining papers (Computer Application-B, English Compulsory, Economics-A, English Literature-A, Economics-B and English Literature-B) as she fell ill on account of chicken pox. Her representation, recommended by respondent No.2, for being allowed to appear at the

supplementary examination was declined by respondent No.1 vide letter dated 02.05.2007 (Annexure P-1).

As culled out from the pleadings of the parties, the moot question which falls for determination is whether a candidate who had to opt out of some papers of the annual examination on account of illness can appear at the supplementary examination or not.

The plea advocated on behalf of the petitioner is that the petitioner is entitled to appear at the supplementary examination (in the left out papers) on the authority of Clause 6 of Chapter XVIII ("Conduct of Examinations") of the 1987 Calendar of the University. The relevant provision, from which sustenance is drawn by the petitioner, is reproduced as under:-

"1 to 5 xxx xxx xxx

6. If a candidate is unable to appear in or to complete the examination owing to:-

(i) serious illness or accident to himself during examination days; or

(ii) the death of a near relative within 3 weeks of actual date of examination, on producing death certificate may be given another opportunity of passing the examination by the Vice-Chancellor if he is satisfied by the evidence produced that the concession applied for is justified.

Such a candidate may, on his recovery, in the case of illness/accident, be examined, at his option, in the subsequent examination, on payment of the prescribed fee, in the paper/s which he missed. The candidate shall be intimated free of charge, as to whether he has obtained the minimum pass marks or not in the paper or papers, in which he had appeared:

Provided that the concession envisaged in the Ordinance may also be given in the case of candidate

who is taken seriously ill in the examination and is unable to complete the examination on his producing medical certificate of illness and on the recommendations of the Centre Superintendent concerned; provided that the Vice-Chancellor is satisfied on the basis of evidence produced that the concession applied for is justified. It is understood that in such cases the Centre Superintendent shall send the answer-book of the candidate as stray case making concrete recommendations on the merit of the case indicating time at which the candidate was taken ill in the centre and number of questions attempted by the candidate by that time.

The application of such a candidate shall be entertained only if it fulfills the following conditions:

(a) The application is submitted within reasonable time from the date on which the candidate could not take the examination;

(b) The application is submitted through the Head of the Institution and the Head certified that the candidate could not appear in or complete the examination because of his serious illness or accident to himself, or death of a near relative during the examination days, as per requirement of this Ordinance.

The concession allowed under the Ordinance shall be treated as an additional chance over the above, the normal chances admissible under the Ordinances relating to the examination at which the candidate appeared.

Candidates passing under this Ordinance shall not be eligible for a scholarship or prize."

The plea aforementioned raised on behalf of the petitioner is resisted by respondent No.1 by placing reliance upon the following instructions contained in Chapter 1, Volume IV (of the 2005 Calendar of the University), which are reproduced as under:-

"**B.A./B.Sc. (UNDER THE NEW+3 SCHEME)**

1. The instruction for the course shall be divided into three Parts (Part-I, II and III) and an annual examination will be held at the end of every year in the month of April or as fixed by the Academic Council.
2. The supplementary examination shall be held in September or as fixed by the Academic Council. This examination shall be open to candidates who have been declared reappear in one subject.
3. The candidates who have passed B.A./B.Sc. and are appearing for additional subjects or for improvement of division (in case of B.A.) shall be eligible to appear in the annual examination. However, they shall be eligible to appear in only one additional subject at the supplementary examination.
4. A candidate who passes B.A./B.Sc. Part-I Examination in supplementary examination with a special chance, cannot appear in the next subsequent examination of B.A./B.Sc. Part-III.
5. The examination in Part-I, Part-II and Part-III shall be open to a person who satisfies the requirements at A and B:" (underlining for emphasis).

As apparent from the respective pleas of the parties, reliance on behalf of the petitioner is placed upon the general provisions pertaining to the Conduct of Examinations; while sustenance is drawn in the context by respondent No.1 from the specific provisions pertaining to the students appearing at the B.A./B.Sc. (under the New+3 Scheme).

As evident from a conjunctive perusal of the above quoted provisions contained in the University Calendar, the plea raised on behalf of the petitioner is completely bereft of merit. In the face of the specific provisions contained in the matter of "Conduct of Examinations for the B.A./B.Sc. candidates", the general provisions cannot hold the fort and the

latter have to make way for the former. This inference is buttressed by the fact that it is only a candidate announced to be a re-appear candidate in one paper who would be allowed to study for the higher class. That allowance would enable him to fulfill the condition of having to attend 75% of the lectures delivered in order to be able to appear at the annual examination. In that eventuality, such a "reappear candidate" is not declared to be a failed candidate. The fact of his having cleared the other papers is inherent in his being allowed to reappear at the supplementary examination. In the present case, on the own showing of the petitioner, she could appear only in three papers and had to opt out from appearing in the remaining papers (Computer Application-B, English Compulsory, Economics-A, English Literature-A, Economics-B and English Literature-B). Hers is, thus, not a case which would entitle her to go over to the higher class nor is, in fact, it her averment that she has been allowed to attend the lectures for the next higher class.

The position may be exemplified by the following example. The petitioner has not been allowed to attend the lectures for the Part-III class. The academic session starts in or about July of every year. The results of the supplementary examination may be declared in or about October/November of the year. By the very nature of things, the petitioner would not be able to attend 75% of the lectures delivered in any case, even if she were to be declared qualified at the supplementary examination.

In the scheme of things envisioned by the University Calendar, the supplementary examination to be held in September (or as per a fixture ordered by the Academic Council) is open to the candidates "who have been declared reappear in one subject". Apart therefrom, the candidates who

have passed B.A./B.Sc. “and are appearing for additional subjects or for improvement of division (in case of B.A.) shall be eligible to appear in the annual examination. However, they shall be eligible to appear in only one additional subject at the supplementary examination”. Thus, the only conclusion deducible from the above quoted relevant provisions of the University Calendar is that the supplementary examination is meant only for a candidate who has to reappear in one subject.

The position that, thus, emerges from an analysis of the relevant provisions of the University Calendar is that the supplementary examination is meant only for the candidates who have to `reappear' in one paper, has cleared the other papers and have been allowed to attend the lectures for the (next) higher class, the only and obvious object of the last indicated allowance being to enable the candidate to meet the required percentage of the lectures delivered for being eligible to appear at the annual examination of the higher class, in case of clearance of the `reappear' subject.

In the light of foregoing discussion, the petition fails and is ordered to be dismissed. There shall, however, be no order as the costs of the cause in the peculiar circumstances of the case.

(S.D. Anand)
Judge

September 06, 2007 (Adarsh Kumar Goel)
vkd Judge

Note : Whether referred to reporter or not : Yes/No